IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.628 of 2001
With
Civil Application No.1367 of 2002

Bibhishan Bhimsen Patil — Appellant
Vs.
Sou. Suman Dattatraya Joshi & ors. — Respondents

Mr.N.V.Walawalkar, Sr. Counsel with Mr. R.S. Kate for appellant.

Mr.S.D.Dharmadhikar for resp. nos.1-A to 1-E.

CORAM: B.H.MARLAPALLE,J.

March 26, 2007.

P.C.

. Heard Mr.Walawalkar, learned Senior Counsel with Mr. Kate for the original plaintiff, Mr.Dharmadhikari appears for the respondents. The plaintiffs filed Special Civil Suit No.571 of 1993 for possession and mesne profits. The suit was dismissed by the learned 3rd Jt. Civil Judge, Senior Division at Kolhapur by his judgment and order dated 15/10/1997 and the said order was challenged by the plaintiffs in Regular Civil Appeal No.500 of 1997. The appeal also failed on 4/12/2000 and, therefore, this second appeal.

. The trial Court framed in all four issues and two of them were required to be proved by the

plaintiffs viz.:

(a) Did the plaintiffs describe the suit property correctly? And

(b) Do they prove their title over the suit property?

. Both these issues were answered against the plaintiffs on appreciation of the documentary as well as oral evidence. On the other hand the defendant no.1 proved before the trial Court that the suit property was purchased by her from the original owner vide the registered sale deed dated 12/7/1974 by way of the sale made by the Court in execution of the decree in Special Civil Suit No.57 of 1974. On the first issue regarding the description of the suit property the lower Appellate Court agreed with the trial Court and further held that the sale deed dated 12/7/1974 was not hit by the doctrine of lis pendence.

. When the suit property itself was not properly described as has been held by the Courts below concurrently on the basis of the evidence that was

adduced by the parties before the trial Court, nothing further survives at the plaintiffs' behest and no substantial question of law for the consideration of this Court would arise. The plaintiffs will have to first identify the property concerned and then may take appropriate steps as may be permissible in law, but as far as Special Civil Suit No.571 of 1993 is concerned, the decisions of both the Courts below are against the plaintiffs and mainly on the ground that the suit property was not described properly.

. Hence this appeal must fail at the threshold and the same is hereby dismissed in limine.

. Civil application does not survive and the same stands dismissed.

(B.H